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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,917	05/25/2005	Terrence John Mehan	15284.0001	8724
27890	7590	08/27/2009		
STEPTOE & JOHNSON LLP				
1330 CONNECTICUT AVENUE, N.W.				
WASHINGTON, DC 20036				
EXAMINER				
TYLER, STEPHANIE E				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
08/27/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/516,917

**Applicant(s)**

MEHAN, TERRENCE JOHN

**Examiner**

STEPHANIE E. TYLER

**Art Unit**

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 July 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-7,9 and 10 is/are pending in the application.  
4a) Of the above claim(s) 8 and 11-16 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1,3-7,9,10 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/16/2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,3-7,9,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagaman (3,201,015) in view of Persson et al. (5,927,353).

The Wagaman reference discloses a dispenser device having a dispenser device body (14) with an inlet end (open end near 22) and an outlet end (18); a transport passage (interior area between elements 22 & 32) between the inlet end and the outlet end, the transport passage (interior area between elements 22 & 32) having an inner wall (see fig.2) including a tapered portion (see fig.2) tapering outwardly from a direction

of the inlet end toward the outlet end, wherein a cross-sectional internal dimension at the inlet end of the transport passage is smaller than a cross-sectional internal dimension at the outlet end of the transport passage; and at least two sealing connector sections (28,32), located on an inner surface of the dispenser device body proximate to the inlet end, and on an outer surface of the dispenser device body proximate to the outlet end, respectively, for sealingly connecting the device with a filler vessel (10) and an unfilled vessel (interior area of 16), thereby forming a substantially airtight seal, so that air within the unfilled vessel (interior area of 16) is displaced by contents from the filler vessel (10) and passes through the transport passage during a filling operation.

However the Wagaman reference lacks powder to be used in the device. The Persson et al. reference teaches a funnel device (10) sealed onto a unfilled vessel/container (12); and the purpose for the funnel device is to store alternative contents such as coffee, beans.....powder and other flowable material or fluids" into the container (col.3, lines 3-5).

Therefore it would have been obvious to one having ordinary skill in the art to have at the time of the invention to have reasonably modified the use of contents in the Wagaman's device with the use of powder as taught by Persson et al. in order to provide the consumer with a versatile dispenser device that can expel a variety of different types of contents.

Regarding claim 4, wherein the transport passage includes rounded shoulders at its inlet end is a design choice based upon the needs of the manufacturer and/or consumer that will be operating the dispenser device. Having rounded shoulders at the

inlet end of the transport passage does not affect the utility of the dispensing device; and thus fails to be patentably defined over the prior art. Moreover in the Applicant's specification on page 2, line 8 it states, "the transport passage may include rounded shoulders at its inlet end". This justifies that the rounded shoulders of the transport passage is not necessary to the operation/function of the dispenser device.

#### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1,3-7,9,10 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Ellis Calvo et al. (6,425,424), Curtis et al. (2,885,949), and Klotz (5,549,227) are other various types of dispenser device that are attached to filled/unfilled vessels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. TYLER whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. T./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art Unit 3754